

73-5-13 Claim to surface or underground water not otherwise represented -- Information required -- Corrections -- Filing -- Investigation -- Publication -- Judicial action to determine validity -- Rules.

- (1)
 - (a) A claimant to the right to the use of water, including both surface and underground water, whose right is not represented by a certificate of appropriation issued by the state engineer, by an application filed with the state engineer, by a court decree, or by a notice of claim filed pursuant to law, shall submit the claim to the state engineer in accordance with this section.
 - (b) Subsections (2) through (7) only apply to claims or corrected claims submitted to the state engineer in accordance with this section on or after May 14, 2013.
- (2)
 - (a) A claim submitted under this section shall be verified under oath by the claimant or the claimant's duly appointed representative and submitted on forms provided by the state engineer setting forth any information the state engineer requires, including:
 - (i) the name and mailing address of the person making the claim;
 - (ii) the quantity of water claimed in acre-feet or rate of flow in second-feet, or both, where appropriate;
 - (iii) the source of supply;
 - (iv) the priority date of the right;
 - (v) the location of the point of diversion with reference to a United States land survey corner;
 - (vi) the place of use;
 - (vii) the nature and extent of use;
 - (viii) the time during which the water has been used each year; and
 - (ix) the date when the water was first used.
 - (b) The claim shall also include the following information, prepared by a Utah licensed engineer or a Utah licensed land surveyor:
 - (i) measurements of the amount of water diverted;
 - (ii) a statement that the quantity of water claimed either in acre-feet or cubic feet per second is consistent with the beneficial use claimed and the supply that the source is capable of producing; and
 - (iii) a map showing the original diversion and conveyance works and where the water was placed to beneficial use, including irrigated lands, if irrigation is the claimed beneficial use.
 - (c) The state engineer may require additional information as necessary to evaluate any claim including:
 - (i) affidavits setting forth facts of which the affiant has personal knowledge;
 - (ii) authenticated or historic photographs, plat or survey maps, or surveyors' notes;
 - (iii) authenticated copies of original diaries, personal histories, or other historical documents that document the claimed use of water; and
 - (iv) other relevant records on file with any county recorder's, surveyor's, or assessor's office.
- (3)
 - (a) A claimant, or a claimant's successor in interest, as shown in the records of the state engineer may file a corrected claim that:
 - (i) is designated as a corrected claim;
 - (ii) includes the information described in Subsection (2); and
 - (iii) bears the same number as the original claim.
 - (b) If a corrected claim that meets the requirements described in Subsection (3)(a) is filed before the state engineer publishes the original claim in accordance with Subsection (4)(a)(iv), the state engineer may not charge an additional fee for filing the corrected claim.

- (c) The state engineer shall treat a corrected claim that is filed in accordance with Subsection (3) (a) as if the corrected claim were the original claim.
- (4)
- (a) When a claimant submits a claim that is acceptably complete under Subsection (2) and deposits money with the state engineer sufficient to pay the expenses of conducting a field investigation and publishing a notice of the claim, the state engineer shall:
 - (i) file the claim;
 - (ii) endorse the date of its receipt;
 - (iii) assign the claim a water right number;
 - (iv) publish a notice of the claim following the same procedures as provided in Section 73-3-6; and
 - (v) if the claimant is the federal government or a federal agency, provide a copy of the claim to the members of the Natural Resources, Agriculture, and Environment Interim Committee.
 - (b) Any claim not acceptably complete under Subsection (2) shall be returned to the claimant.
 - (c) The acceptance of any claim filed under this section by the state engineer may not be considered to be an adjudication by the state engineer of the validity of the claimed water right.
- (5)
- (a) The state engineer shall:
 - (i) conduct a field investigation of each claim filed; and
 - (ii) prepare a report of the investigation.
 - (b) The report of the investigation shall:
 - (i) become part of the file on the claim; and
 - (ii) be admissible in any administrative or judicial proceeding regarding the validity of the claim.
- (6)
- (a) Any person who may be damaged by a diversion and use of water as described in a claim submitted pursuant to this section may file an action in district court to determine the validity of the claim, regardless of whether the state engineer has filed the claim in accordance with Subsection (4)(a).
 - (b) Venue for an action brought under Subsection (6)(a) shall be in the county where the point of diversion listed in the claim is located, or in a county where the place of use, or some part of it, is located.
 - (c) The action shall be brought against the claimant to the use of water or the claimant's successor in interest.
 - (d) In any action brought to determine the validity of a claim to the use of water under this section, the claimant shall have the initial burden of proof as to the validity of the claimed right.
 - (e)
 - (i) A person filing an action challenging the validity of a claim to the use of water under this section shall notify the state engineer of the pendency of the action in accordance with state engineer rules.
 - (ii) Upon receipt of the notice, the state engineer may take no action on any change or exchange applications founded on the claim that is the subject of the pending litigation until the court adjudicates the matter.
 - (f) Upon the entering of any final order or decree in a judicial action to determine the validity of a claim under this section, the prevailing party shall file a certified copy of the order or decree with the state engineer, who shall incorporate the order into the state engineer's file on the claim.

- (7)
- (a) In a general adjudication of water rights under Title 73, Chapter 4, Determination of Water Rights, after completion of final summons in accordance with Section 73-4-22, a district court may, by decree, prohibit future claims from being filed under this section in the general adjudication area, division, or subdivision.
 - (b) If the state engineer receives a claim for an area where a court has prohibited filing under Subsection (7)(a), the state engineer shall return the claim to the claimant without further action.

Amended by Chapter 221, 2013 General Session

Amended by Chapter 343, 2013 General Session

Amended by Chapter 429, 2013 General Session

Amended by Chapter 429, 2013 General Session, (Coordination Clause)